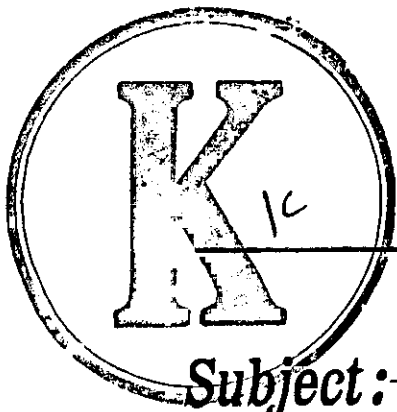


1942.

File No. O Telegraph
42



Legal DEPARTMENT
"A" BRANCH

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Subject:—

S.R.C.
4/6

Opinions under the Indian
Telegraph Act; 1885.

File No. O Telegraph/42

Std. Sectt. Slip 24 B e.

356-A

CONFIDENTIAL.

Signal Department File No. 3. Telegraphs/12.

Serial No.	Comp. No.	Subject	Pages
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Opinions under the Indian
Telegraph Act, 1908.

2. O.N.O. 4286/23-5-42

Sec. 13

Not laying of telephone cables by the
posts and Telegraph Deptt. between the
Govt. Telephone exchange at Ah'mager and
the quadruped terminal advice Govt.
at Ah'mager whether the posts and Telegraphs
Deptt. is exempt from executing the agree-
ments as required by the executive Engineer
P.L.D. and the president, D.L.D.

1-4

Handwritten marks:
A cluster of dark ink marks.
Below them, the letters "M" and "24" written in a cursive hand.

Office of the R.L.A.

In his letter No. E.W. 1/21, dated the 28th March 1942, the Post-Master General, Bombay, states that in the year 1939-40 an underground telephone ^{cable} ~~cables~~ was laid by the Posts and Telegraphs Department between the Government Telephone Exchange at Ahmednagar and the quadrupod terminal outside fort at Ahmednagar. The Executive Engineer, Public Works Department accorded sanction to the laying of ^{cable} ~~cables~~ and stated that according to orders of Government the Posts and Telegraphs Department should execute an agreement in the prescribed form (vide accompaniment to Government Resolution, Public Works Department, No. 8033/27, dated 31st August 1939). Similarly, the President, District Local Board, Ahmednagar, by his letter No. Wks-I-Msc-4, dated 2nd March 1940, granted the necessary permission subject to the conditions mentioned therein. The Post Master, General holds that the conditions regarding payment of annual rental for the use of the Public Works Department road and the local fund cess and conditions Nos. 8, 10 and 11 of the draft agreement sent by the President, District Local Board appear to be unreasonable. The Post Master General, Bombay, requests that the Posts and Telegraphs Department may be exempted from executing the agreements as required by the local authority and the Executive Engineer, Public Works Department. The question for the R.L.A.'s consideration appears to be whether the Posts and Telegraphs Department is exempt from executing the agreements as required by the Executive Engineer, Public Works Department and the President, District Local Board, Ahmednagar.

2. Section 10 of the Indian Telegraph Act, 1885, Provides that the telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property. For the purposes of Part

III of the Act, immoveable properties, are classified into two categories :--

(i) property vesting in, or under the control of or management of, any local authority (vide section 10, proviso (c) and sections 12 to 15); and

(ii) any property other than that referred to above i.e. property, not being property vested in, or under the control or management of, a local authority (sections 10 (d), 16 and 17).

As regards the first class of property, i.e. in respect of property vested in or under the control or management of a local authority, the proviso (c) to section 10 recites that except as hereinafter provided, the telegraph authority shall not exercise the powers without the permission of that authority. It is, therefore, evident that a telegraph authority cannot place a telegraph line under, over, along or across, and posts in or upon, any property vesting in or under the control or management of a local authority without the previous permission of such body. Section 12 enacts that any permission given by a local authority under proviso (c) to section 10 may be given subject to such reasonable conditions as that authority thinks fit to impose, as to

(a) the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or

(b) as to the time or mode of execution of any work,
or

(c) as to any other thing connected with or relative to any work undertaken by the telegraph authority under those powers.

It is thus clear that under section 12 of the Act a local authority is competent to impose conditions before granting permission for laying cables. The telegraph authority is not bound to accept these conditions. It can dispute them and in that event the Collector under section 15 of the Act will decide between the local authority and the telegraph authority. From the Collector an appeal lies to the Central Government whose

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2. Section 10 of the Indian Telegraph Act, 1885, Provides that the telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property. For the purposes of Part

order is final. If the telegraph ~~authority~~ agrees to the conditions, it must as a matter of course signify its consent in some way and for that purpose there seems no objection to entering into an agreement with the local authority. The telegraph authority has full power to dispute individual conditions and to bring the dispute before the Collector and the Central Government for decision. In the present case the telegraph authority seems to object firstly to certain conditions and secondly to signifying its consent to the conditions by entering into an agreement. The second objection in the case of the agreement with the local authority does not seem reasonable. But it does not seem a matter which concerns the Public Works Department. It is open to the telegraph authority to bring both matters before the Collector for decision.

3. The properties mentioned in class (ii) above, that is, properties other than those referred to in clause (c) of section 10, would bring within its scope not only the properties belonging to private individuals but also those belonging to or vesting in Government. There is no provision in section 10 parallel to that contained in clause (c) which requires that the telegraph authority should exercise its powers in respect of such property with the permission of the owner or occupier concerned. On the contrary, clause (d) of section 10 provides that in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of these powers. Clauses (c) and (d) read together make it clear that in respect of the Public Works Department road it would be competent for the telegraph authority to place the underground cable without the previous permission of the Executive Engineer, Public Works Department. The provisions of section 16 appear to support this view. Further, in the absence of any provision on the lines of section 12, the Executive Engineer, Public Works Department, cannot

insist upon the telegraph authority executing an agreement on the lines of the draft agreement sent by him.

The correspondence contained in the preamble to Government Resolution, Public Works Department No. 8033/27, dated 31st August 1939 appears to show that the draft forms of agreement ^{must} ~~are meant to be used~~ ^{must be used in those} cases where ^{mm} permission is given to lay (1) underground water mains and (2) underground cable or overhead distribution wires of Electric Supply and Telephone Companies. The Government Resolution is not intended to cover a case like the present ^{cable} where the person laying the cable is the telegraph authority which has statutory right under section 10 of the Telegraph Act, 1885 to lay cables. The Government Resolution appears to be meant for cases in which persons with no statutory right to lay ^{cables} cables etc. without permission apply for permission.

Rememberancer of Legal Affairs.

U.R. to P.W.D.? No.4286

dated the 25th May 1942.

K.N.P.
7/5/1956
4.c.

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